

North West Community Council
May 27, 2013

TO: Chair and Members of North West Community Council

SUBMITTED BY: Original Signed
Brad Anguish, Director of Community & Recreation Services

DATE: April 22, 2013

SUBJECT: **Case 17531: MPS Amendment & Development Agreement for a Fraternal Centre at 40 Sandy Lake Road, Beaver Bank**

SUPPLEMENTARY REPORT

ORIGIN

- Application by the Beaver Bank Kinsac Lions
- March 5, 2013, approval by Halifax Regional Council of amendments to the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy (MPS) and Land Use By-law (LUB)

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed development agreement as set out in Attachment A of this report; and
2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

On March 5, 2013, Regional Council and North West Community Council held a joint public hearing to consider amendments to the Beaver Bank, Hammonds Plains and Upper Sackville MPS and LUB, as well as a proposed development agreement to permit a fraternal centre by development agreement at 40 Sandy Lake Road, Beaver Bank. Subsequent to the joint public hearing, Regional Council gave its approval of the amendments to the MPS and LUB. As noted in the December 14, 2012 report, Community Council could not make a decision on the proposed development agreement until the MPS and LUB amendments became effective.

The MPS and LUB amendments became effective on April 20, 2013, and Council is now in a position to consider approval of the development agreement.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

COMMUNITY ENGAGEMENT

Community engagement was consistent with the HRM Community Engagement Strategy, the *Halifax Regional Municipality Charter*, and the Public Participation Program approved by Council in February, 1997.

The level of community engagement was consultation, achieved through a Public Information Meeting held on June 18, 2012 and a joint public hearing held by Regional Council and North West Community Council on March 5, 2013.

The proposed Development Agreement will potentially impact the following stakeholders: local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant, environmental policies contained in the Beaver Bank, Hammonds Plains and Upper Sackville MPS and LUB.

ALTERNATIVES

1. North West Community Council may approve the proposed development agreement as provided in Attachment A of this report. This is staff's recommendation. A decision of Council to approve the development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

- 2. North West Community Council may approve the proposed development agreement with modifications which are acceptable to the Applicant. Such modifications may require further negotiations with the Applicant, a supplementary staff report or an additional public hearing.
- 3. North West Community Council may refuse the proposed development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to reject this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Attachment A Proposed Development Agreement

Available upon request

Staff Report for Case 17531 dated December 14, 2012

<http://www.halifax.ca/Commcoun/central/documents/Report1toCCJan28.pdf>

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jacqueline Belisle, Planner, 869-4262

Original Signed

Report Approved by: Kelly Denty, Manager of Development Approvals, 490-4800

Attachment A
Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 2013,

BETWEEN:

Insert Name of Corporation/Business LTD.
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY
a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 40 Sandy Lake Road, Beaver Bank and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a fraternal centre on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to policy P-22A of the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy and Section 3.6(d) of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 17531;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17531:

List all applicable Schedules:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan – 17531-01

3.2 Requirements Prior to Approval

3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) A Fraternal Centre, as shown on Schedule B and as set out in this Agreement.
- (b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as amended from time to time.

3.4 Detailed Provisions for Land Use

3.4.1 The building and accessory buildings shall be developed in conformance with Section 13.3 (MU-1 Zone Requirements: Other Uses) and 13.5 (Other Requirements: Commercial Uses) as set out in the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law requirements as amended from time to time.

3.5 SUBDIVISION OF THE LANDS

3.5.1 Subdivision of the Lands shall only be considered as a substantive amendment to this agreement.

3.6 PARKING, CIRCULATION AND ACCESS

3.6.1 The parking requirement shall be as per the requirement for parking for Full Service Restaurants in accordance with the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law as amended from time to time.

3.6.2 The parking area and driveway access shall be hard surfaced or gravelled.

3.7 OUTDOOR LIGHTING

3.7.1 Lighting shall be directed to driveways, parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.8 TREE RETENTION

3.8.1 The Developer shall maintain a Tree Retention Area as shown on Schedule B, for buffering purposes between the property and abutting properties.

3.8.2 The Developer shall not remove any trees or vegetation located within the Tree Retention area.

3.8.3 Nothing, aside from driveway access, shall be located, stored or placed within the Tree Retention Area.

- 3.8.4 The Tree Retention Area shall be identified on all plans required by the Municipality.
- 3.8.5 Trees and vegetation within the Tree Retention Area shall be replaced if removed or damaged beyond repair. The Municipality shall require the Developer to submit a Remediation Plan prepared by a Landscape Architect (a full member, in good standing with the Canadian Society of Landscape Architects) or other qualified professional.
- 3.8.6 The Developer may remove dead, damaged or diseased vegetation provided prior permission is obtained from the Development Officer. The Municipality may require the Developer to submit a Tree Retention Management Plan prepared by a Landscape Architect (a full member, in good standing with the Canadian Society of Landscape Architects) or other qualified professional.

3.9 MAINTENANCE

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.10 SIGNS

One sign shall be permitted in accordance with Section 5.9 of the Beaver Bank, Hammonds Plains and Upper Sackville the Land Use By-law as amended from time to time.

3.11 HOURS OF OPERATION

- 3.11.1 The fraternal centre shall be permitted to operate between the hours of seven (7:00) am and eleven (11:00) pm daily.
- 3.11.2 Hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

PART 4: STREETS AND MUNICIPAL SERVICES

Off-Site Disturbance

- 4.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.
- 4.2 Any further development on the site, including but not limited to, building permits, site grading, or resurfacing may require engineering drawings or detailed information provided.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 6.3.1 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 6.5.1 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within six (6) months from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean when a permit application has been submitted and accepted as complete by HRM Development Services for the fraternal centre.

6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.1(a), if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

6.4. Completion of Development

6.4.1 Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as may be amended from time to time.

6.4.2 For the purpose of this section, completion of development shall mean when an occupancy permit has been issued for the fraternal centre.

6.5 Discharge of Agreement

6.5.1 If the Developer fails to complete the development after 5 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED

(Insert Registered Owner Name)

in the presence of:

Per: _____

Per: _____

Witness

**SEALED, DELIVERED AND
ATTESTED** to by the proper signing
officers of Halifax Regional Municipality,
duly authorized in that behalf, in the
presence of:

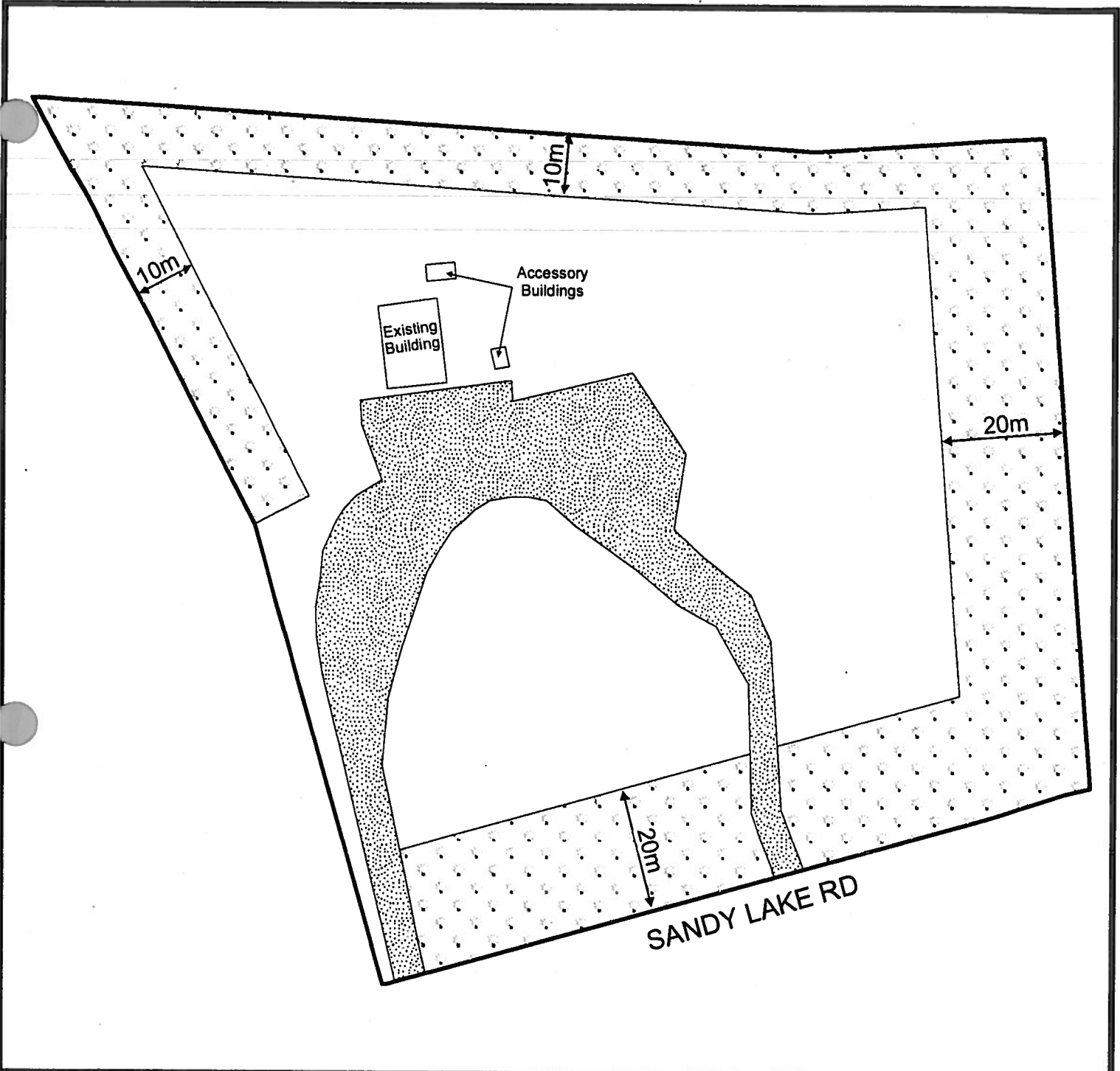
**HALIFAX REGIONAL
MUNICIPALITY**

Witness

Per: _____
Mayor

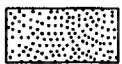
Witness

Per: _____
Municipal Clerk



Schedule B
Site Plan - 17531- 01

HALIFAX
REGIONAL MUNICIPALITY



Existing Driveway



Tree Retention Area



